Supreme Court, U.S.
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No. 05-53

In The

Supreme Court of the United States

BABOUCAR B. & GUYLAINE L. TAAL,

Petitioners,

v.

DOUGLAS & PATRICIA ZWIRNER, KIMBERLY LACEY & STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

BRIEF FOR STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. IN OPPOSITION

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BRIEF FOR STATE FARM MUTUAL AUTOMOBILE INSURANCE CO. IN OPPOSITION

Baboucar B. Taal and Guylaine L. Taal (the "Taals") sued State Farm Mutual Automobile Insurance Company ("State Farm") and others, alleging (as to State Farm) that State Farm participated, as an employer and insurer of other defendants, in certain forms of harassment and violations of the Fair Housing Act under 42 [U.S.C.] §3617.

State Farm moved for summary judgment pursuant to F.R.C.P. 56. The Taals responded with an objection, but no affidavit or other competent summary judgment material to support their vague allegations against State Farm. The district court granted summary judgment to State Farm as follows:

> In short, nothing in plaintiffs' objection identifies any evidence even remotely supportive of their assertion that State Farm conspired with, and/or provided material support and encouragement to, one or more defendants to violate plaintiffs' civil rights or to deprive them of rights guaranteed by the FHA. Defendant State Farm Mutual Auto Insurance Co.'s motion for summary judgment is, therefore, granted. *See generally Slotnik v. Garfinkle*, 632 F.2d 163, 165 (1st Cir. 1980) ("Though we are mindful that pro se complaints are to be read generously, allegations of conspiracy must nevertheless be supported by material facts, not merely conclusory statements.") (citation omitted).

Order of March 10, 2003 at 6 (App. 1).

The Taals moved for reconsideration, apparently seeking relief under F.R.C.P. 56(f); State Farm objected as untimely and improperly supported. The district court denied the motion for reconsideration as follows:

> Dissatisfied with the court's order granting State Farm's motion for summary judgment, plaintiffs now (appear to) seek relief under Fed. R. Civ. P. 56(f). *See* Plaintiff's memorandum at 1 ("State Farm['s] motion for summary judgment [was] by all standard[s] premature as Rule 56(f) clearly indicates that a party opposing summary judgment must be allowed adequate opportunity to conduct discover[y] or otherwise develop the evidence in opposition of the summary judgment motion."). To the extent plaintiffs do seek relief under Rule 56(f), their request is neither properly supported nor is it timely. *See, e.g., Mass. School of Law at Andover v. American Bar Ass'n*, 142 F.3d 26, 44 (1st Cir. 1998) ("To savor the balm of Rule 56(f), a party must act in a timely fashion. Moreover, the moving papers must contain a proffer which, at a bare minimum, articulates a plausible basis for the movant's belief that previously undisclosed or undocumented facts exist, that those facts can be secured by further discovery, and that, if obtained, there is some credible prospect that the new evidence will create a trialworthy issue.") (citations omitted). *See also Peterson-Leitch Co., Inc. v. Mass Municipal Wholesale Elec. Co.*, 840 F.2d 985, 988-90 (1st Cir. 1988).

Order of April 9, 2003 at 2-3 (App. 7-8).

After disposition of the case with respect to the remaining defendants, the Taals appealed the judgment to the Court of Appeals for the First Circuit, which affirmed as follows:

> After carefully considering the record and briefs on appeal, we *affirm* for substantially the reasons stated by the district court.

> At summary judgment, the appellants failed to produce any evidence that would tend to show a genuine dispute of material fact concerning any claim. That is a fatal defect. *Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir. 1990).

The Taals seek review, as to State Farm, of the grant of summary judgment by the district court. The Taals did not, in their objection filed with the district court, submit any competent responsive material, but merely restated the conclusory allegations of their complaint. The district (and appellate) court correctly concluded that summary judgment for State Farm was appropriate.

With respect to their motion for reconsideration, raising for the first time a Rule 56(f) argument (need for further discovery), the request for reconsideration came too late, and also lacked the requisite specificity. The district (and appellate) court correctly denied this motion as well.

The Taals' petition does not assert, or even suggest, any conflict between the decision below and that of another court of appeals, or any important question of federal law that is unsettled or in conflict with decisions of this Court. *Cf.* Rule 10.

Accordingly, the Taals' petition should be denied.

Respectfully submitted,

State Farm Mutual Automobile Insurance Company

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Dated: August 8, 2005

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Baboucar B. Taal
and Guylaine L. Taal,

Plaintiffs

v.

Civil No. 02-131-M
Opinion No. 2003 DNH 034

Patricia Zwirner, Kim Lacey,
and State Farm Mutual Auto
Insurance Co.,

Defendants

ORDER

(Filed Mar. 10, 2003)

Pro se plaintiffs, Baboucar and Guylaine Taal, claim that defendants conspired to interfere with their civil rights, 42 U.S.C. § 1985(3), and violated provisions of the Fair Housing Act ("FHA"), 42 U.S.C. § 3601, et seq.

Plaintiffs have filed more than a dozen motions, including several motions to strike, two motions for default judgment, a "motion for estoppel objection," and two "emergency motion[s] for issuance of subpoenas." They have also filed notice of two interlocutory appeals. To date, with the exception of a motion to amend the complaint, none of the motions filed by plaintiffs has had any merit. Although pro se litigants cannot be expected to practice at a level acceptable for licensed attorneys, these plaintiffs, though energetic, are proving particularly unhelpful to themselves and are placing more than the usual burden upon opposing counsel who must respond to their prolific filings.

State Farm Mutual Auto Insurance Company ("State Farm"), seeks an early exit from this litigation, and so moves for summary judgment. Also pending are several motions for miscellaneous relief, primarily related to ongoing discovery disputes.

Standard of Review

When ruling on a party's motion for summary judgment, the court must "view the entire record in the light most hospitable to the party opposing summary judgment, indulging all reasonable inferences in that party's favor." *Griggs-Ryan v. Smith*, 904 F.2d 112, 115 (1st Cir. 1990). Summary judgment is appropriate when the record reveals "no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). In this context, "a fact is 'material' if it potentially affects the outcome of the suit and a dispute over it is 'genuine' if the parties' positions on the issue are supported by conflicting evidence." *Intern'l Ass'n of Machinists and Aerospace Workers v. Winship Green Nursing Center*, 103 F.3d 196, 199-200 (1st Cir. 1996) (citations omitted).

Nevertheless, if the non-moving party's "evidence is merely colorable, or is not significantly probative," no genuine dispute as to a material fact has been proved, and "summary judgment may be granted." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249-50 (1986) (citations omitted). As the Court of Appeals for the First Circuit has observed, "the evidence illustrating the factual controversy cannot be conjectural or problematic; it must have substance in the sense that it limns differing versions of the truth which a factfinder must resolve at an ensuing trial.

Conclusory allegations, improbable inferences, and unsupported speculation will not suffice." *Cadle Co. v. Hayes*, 116 F.3d 957, 960 (1st Cir. 1997) (citations and internal quotation marks omitted).

Discussion

I. State Farm's Motion for Summary Judgment.

Although plaintiffs' complaint is not a model of detail or clarity, it is still possible to glean from it, and other submissions made by plaintiffs, the general nature of their claim against State Farm. Plaintiffs allege that State Farm conspired with its insureds, the Zwirners (and its employee, Patricia Zwirner), to (somehow) deprive the plaintiffs of various federally protected rights:

> Defendants Zwirners engaged in these acts of [r]acial [h]arassment, and [i]ntimidation with full knowledge of State Farm Insurance Co.[,] their employer and insurer, [with State Farm] providing equipment, material comfort and counsel. State Farm directly and indirectly participated in the conspiracy to violate and interfere with our civil rights with purposeful intent, to defeat and deny us the equal protection under the law and injure us and our property. They allowed, furnished and directed the Zwirners to take pictures, engage in computer generated harassing phone calls, using the same computers to perpetrate and concoct the conspiracy with defendant Lacey.

Amended Complaint (document no. 14) at para. 6. *See also* Plaintiffs' Response to Defendant State Farm Insurance Co.'s Motion for More Definite Statement (document no 13) at para. 4 ("State Farm directly and indirectly

participated in the conspiracy to violate and interfere with our civil rights, with the purposeful intent to deny us equal protections of the law and injure us and our property.").

The essence of an unlawful civil conspiracy is an agreement to achieve some unlawful end or to achieve a lawful goal by unlawful means, accompanied by an overt act taken in furtherance of that agreement. *See, e.g., Earle v. Benoit*, 850 F.2d 836, 844 (1st Cir. 1988) ("A civil rights conspiracy as commonly defined is a combination of two or more persons acting in concert to commit an unlawful act, or to commit a lawful act by unlawful means, the principal element of which is an agreement between the parties to inflict a wrong against or injury upon another, and an overt act that results in damages.") (citations and internal quotation marks omitted). Unfortunately, plaintiffs' three-page objection to summary judgment does little more than repeat plaintiffs' conclusory claims of conspiratorial misconduct on the part of State Farm; it is not supported by any affidavits, relevant deposition testimony, answers to interrogatories, computer records, or any other documentary evidence that might suggest that State Farm participated in any sort of conspiracy to deprive plaintiffs of their federally protected rights.

In short, nothing in plaintiffs' objection identifies any evidence even remotely supportive of their assertion that State Farm conspired with, and/or provided material support and encouragement to, one or more defendants to violate plaintiffs' civil rights or to deprive them of rights guaranteed by the FHA. Defendant State Farm Mutual Auto Insurance Co.'s motion for summary judgment (document no. 57) is, therefore, granted. *See generally Slotnick v. Garfinkle*, 632 F.2d 163, 165 (1st Cir. 1980)

("Though we are mindful that pro se complaints are to be read generously, allegations of conspiracy must nevertheless be supported by material facts, not merely conclusory statements.") (citation omitted).

* * *

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Baboucar B. Taal
and Guylaine L. Taal,
Plaintiffs

v.

Patricia Zwirner
and Kim Lacey,
Defendants

Civil No. 02-131-M
Opinion No. 2003 DNH 062

ORDER

(Filed Apr. 9, 2003)

Pro se plaintiffs, Baboucar and Guylaine Taal, filed this civil action against defendants, alleging that they conspired to interfere with plaintiffs' civil rights, 42 U.S.C. § 1985(3), and violated provisions of the Fair Housing Act ("FHA"), 42 U.S.C. § 3601, et seq. They seek $21 million in compensatory and punitive damages. By order dated March 10, 2003, the court granted the motion for summary judgment submitted by defendant State Farm Mutual Auto Insurance Company.

Pending before the court are the following motions: plaintiffs' motion for reconsideration of the court's March 10 order (document no. 92); defendant Zwirner's motion to compel discovery from plaintiffs (document no. 91); defendant Lacey's motion to compel discovery from Guylaine Taal (document no. 83); defendant Lacey's motion to compel discovery from Baboucar Taal (document no. 93); defendant Lacey's motion to strike plaintiffs' objection (document no. 99); and plaintiffs' motion for leave to file a

response to State Farm's objection (document no. 98). Those motions are resolved as follows.

I. Plaintiffs' Motions.

Plaintiffs' motion for reconsideration is granted to the extent it moves the court to reconsider its order dated March 10, 2003. Having reconsidered that order, the court reaffirms it in all material respects. Nothing in plaintiffs' motion to reconsider persuades the court that the rulings set forth in its order dated March 10, 2003, were erroneous, either factually or legally.

Dissatisfied with the court's order granting State Farm's motion for summary judgment, plaintiffs now (appear to) seek relief under Fed. R. Civ. P. 56(f). *See* Plaintiffs' memorandum at 1 ("State Farm['s] motion for summary judgment [was] by all standard[s] premature as Rule 56(f) clearly indicates that a party opposing summary judgment must be allowed adequate opportunity to conduct discover[y] or otherwise develop the evidence in opposition of the summary judgment motion."). To the extent plaintiffs do seek relief under Rule 56(f), their request is neither properly supported nor is it timely. *See, e.g., Mass. School of Law at Andover v. American Bar Ass'n.*, 142 F.3d 26, 44 (1st Cir. 1998) ("To savor the balm of Rule 56(f), a party must act in a timely fashion. Moreover, the moving papers must contain a proffer which, at a bare minimum, articulates a plausible basis for the movant's belief that previously undisclosed or undocumented facts exist, that those facts can be secured by further discovery, and that, if obtained, there is some credible prospect that the new evidence will create a trial-worthy issue.") (citations omitted). *See also Peterson-Leitch*

Co., Inc. v. Mass. Municipal Wholesale Elec. Co., 840 F.2d 985, 988-90 (1st Cir. 1988).

Plaintiffs' motion for leave to file a response to State Farm's objection (document no. 98) is denied as moot. Parenthetically, the court notes that plaintiffs' motion also lacks the certification required by the court's order dated March 10, 2003.

* * *